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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

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No. 999

H. H. SPETEN, PETITIONER,

vs.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, RESPONDENT.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit and Brief in Support Thereof.

H. H. SPETEN,
Petitioner,

By F. E. McCurdy,
His Attorney.

Bismarck, North Dakota.

F W F Shafer his attorn
Bismarck N Dak

BUNTON & SKINNER, PRINTERS, ST. LOUIS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No.....

H. H. SPETEN, PETITIONER,

vs.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION, RESPONDENT.

Petition for Writ of Certiorari to the Circuit Court of Appeals for the Eighth Circuit.

To the Honorable the Chief Justice and Associate Justices of the United States:

The Petitioner, H. H. Speten, for himself by his attorneys prays that a Writ of Certiorari issue to review the judgment of the Circuit Court of Appeals entered in the above case on the 17th day of January, 1945, being case No. 12,928, in the United States Circuit Court of Appeals for the Eighth Circuit.

OPINIONS BELOW.

The District Court made Findings of Fact, Conclusions of Law and Order for Judgment, of date of June 23, 1944 (Record pages 15, 16, 17 and 18).

The District Court entered a judgment on the same day, June 23, 1944 (Record pages 18 and 19).

The opinion of the Circuit Court of Appeals is not yet reported, and a copy thereof appears at pages 30 to 35 of the printed record.

JURISDICTIONAL STATEMENT.

The judgment of the Circuit Court of Appeals sought to be reviewed was entered on the 17th day of January, 1945.

The jurisdiction of this Court is invoked upon two grounds:

1. The court below by its judgment has construed and defined the phrase "for use or consumption other than in the course of trade or business" as found and used in Section 205, Subdivision "E" of the Emergency Price Act of 1942, approved January 30, 1944, erroneously. In so doing it has changed the meaning of that phrase from a permission for the injured person to sue the wrong doer for his own benefit and has by the same erroneous definition authorized the Administrator, the respondent in this Petition, to bring the action for the benefit of the Government of the United States.

This interpretation of the phrase, above mentioned, if allowed to stand authorizes an unlawful taking of property of a private individual for public use without just compensation and in direct violation of the Fifth Amendment of the Constitution of the United States, which provides:

> "nor shall private property be taken for public use without just compensation."

2. The Court has directly and unequivocally held that for the United States to sue in a civil action as a remedial and not as a penal measure and recover money from a private individual for the benefit of the United States Treasury, is not a violation of that clause.

3. Those two matters which we assign as errors, namely: the interpretation and definition of the phrase, above mentioned, and constitutional questions are matters of wide national interest and arise in every one of the Circuits in the United States. The decision of these questions goes to the foundation of the administration of this Act.

The Act, itself, as a whole, is constitutional and in harmony with our principles of government. The effect of the application of the act in the two respects complained of is so wide spread and far reaching that the importance cannot be easily measured and we know of no decision of this court which has decided either one of these questions. The interpretation of the phrase deprives the farmers, who are a very material part of our population and who carry on the biggest enterprise are the chief beneficiaries in the matter of the relief intended to be given them by The Congress when it passed this Act. The other question goes to the foundation of virtual repeal or enforcement of the quoted clause in our Federal Constitution. We are satisfied these two questions have never been before this Court. We believe they are of importance, warranting a decision by this Court to the end that those questions may be once and for all finally determined.

QUESTIONS PRESENTED.

Two questions are presented:

1. Does the clause "for use or consumption other than in the course of trade or business" mean that a farmer who buys machinery for his own personal use, not for sale

and not for hire, is used in the course of trade or business?

2. Can the United States take the money collected by judgment from an individual in a civil action where the individual is not accused of any crime, not indicted, and not tried for any crime, just merely sued because of some inadvertent violation of some statute, and the money so collected, turned into the United States Treasury for public use "without just compensation."

STATUTES INVOLVED.

Section 205, Subdivision "E" of the Emergency Price Act of 1942, approved January 30, 1942.

A STATEMENT.

A statement is found in the record under the title of Stipulation of Facts (Record pages 10, 11, 12, 13, and 14).

REASONS FOR GRANTING A WRIT.

1. The definition of the term "for use or consumption other than in the course of trade or business" determines who can bring this action. The farmer in this case or the Administrator for the benefit of the United States.

Putting it briefly, we believe it was the intent of the Congress of the United States to provide that any person in the course of trade or business, who purchased at a price in excess of the "ceiling" with intent to sell at a further advance over the "ceiling" price, should not be permitted to bring this action. That it was the intent of Congress that the ultimate consumer, who was the last man to suffer the financial loss, should be permitted to bring the action for his own benefit. We believe the portion of the phrase quoted "other than in the course of trade or business" modifies the clause "the person who buys such com-

modities for use or consumption". That the construction intended by the Congress was that the person who buys such commodities for use or consumption should be entitled to bring the action, but they wished to limit that so that the man who bought at the higher price than the "ceiling" should sue for his own benefit, except in case where he bought it to sell or trade for profit to himself at the expense of another. We think the foregoing is the correct interpretation and definition of the phrase; that definition makes such a tremendous difference in the meaning of the subdivision that it becomes a very important question and changes the whole tenor of the law.

2. The constitutional Fifth Amendment that private property shall not be taken for public use without just compensation, we believe, was intended to prevent just such a procedure as this. No citizen will complain concerning fines being imposed upon them when any person wilfully violates a statute. But to exact money in large sums not as punishment but as a method of taking private property for public use because some one inadvertently violates a statute, which he may not have known to be in existence, not as punishment, is exactly the thing which was sought to be prevented by this portion of the Fifth Amendment to the Constitution of the United States.

CONCLUSION.

1. The decision below, we believe, erroneously determines both those questions which, when applied to this case and others now pending, results in an arbitrary taking the right to sue away from the injared party (and to whom the Fifth Amendment does not apply) and such an interpretation renders a material part of the statute unconstitutional.

2. To hold such procedure constitutional is a holding which deprives a large number of our citizens of constitutional protection to which they are entitled.

Dated February 5, 1945.

H. H. SPETEN,
Petitioner,

By F. E. McCurdy,
His Attorney.

Bismarck, North Dakota.

Geo. F. Shafer, his attorney
Bismarck, N. Dak.

BRIEF IN SUPPORT OF PETITION.

Statement of Facts.

The facts in so far as they are material to this Petition for the Writ of Certiorari, are as follows:

The Petitioner is not a dealer. He sold a limited number of combines, which were used for the purpose of harvesting grain, to his neighbors who purchased and used them for the purpose of solely harvesting their own grain, and were used on the purchaser's own individual farms and were not sold and not rented out and were not purchased for that purpose. The sale was made at a sum greater than the "ceiling" price. The farmer-purchaser did not bring suit against the neighbor farmer who had sold these combines. The Respondent did bring suit and obtained judgment. This was affirmed by the Circuit Court of Appeals of the Eighth Circuit, except the judgment was vacated and referred back to the District Court for the purpose of determining whether the violation of the price schedule was wilful or because of the failure to take practicable precaution, since the appeal to the Circuit Court of Appeals kept the action pending until an amendment to Section 205, Subdivision "E" of the Emergency Price Act of 1942.

POINTS URGED UPON BY THE PETITIONER.

1. The definition of the clause "for use or consumption other than in the course of trade or business" as used in Section 205, Subdivision "E" of the Emergency Price Act of 1942.

2. Is it a violation of that portion of the Fifth Amendment to the Constitution forbidding taking of property of private individuals without just compensation for the Administrator to bring this suit not as a penalty but as a civil action?

ARGUMENT.

Taking up the first point, namely, the definition. We quote Subdivision "E" of Section 205, of the Emergency Price Act in so far as it is necessary to consider it to determine the meaning of the clause in question.

> "If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorneys' fees and costs as determined by the court."

The purpose of this law among other things as stated in the title, is to check speculation and excessive price rises. To accomplish that purpose, the intention of Congress was undoubtedly to make the violation dangerous for anyone to overcharge. The best method of enforcing such an act is to offer a reward to the person who is in a position to produce the proof against the wrong-doer. That is the exact situation here. This statute provides that the injured person (and that would be just) should recover his money back with penalty, if he, himself, were innocent. That apparently is exactly what this Act intended to do because the statute reads, "the person who buys such commodity for use or consumption" is entitled to sue for three times the amount of the overcharge. However, to take that benefit away from the wrong doer or the one who intended to do wrong, they added a clause as a modification of the clause just quoted "other than in the course of trade or business". That last clause quoted is obviously for the express purpose of depriving a joint feaser who intends

to profit from securing any financial benefit. Our Circuit Court of Appeals in this case has held otherwise and it has been so held by two District Courts.

Bowles v. Rock, 55 Fed. Supp. 865;

Bowles v. Silverman, a South Dakota District Court case reported in OPA Service, 62:538.

CONSTITUTIONAL QUESTION.

This proceeding we believe is in direct violation of the last clause of the Fifth Amendment to the Constitution, which is "nor shall private property be taken for public use without just compensation".

If this judgment is collected they will be taking this Petitioner's private property for public use without any compensation whatsoever to him. This being a civil action does not come within the police power of the Federal Constitution. It has been universally held that this is not a penal statute. Therefore, it comes within the plain English of the quoted clause of the Fifth Amendment.

That protection does not extend to an action by one individual against another so that if these farm-purchasers had sued their farmer-seller, this constitutional prohibition would not apply. That constitutional provision is solely for the protection of the citizen against the taking of his property by the Federal Government without compensation.

We might liken this to the law of exemplory damages, which is familiar to all our states; exemplory damages being a way of punishment from one individual to another may be collected when the conduct has been wilful, malicious and oppressive and even under those extreme conditions, no exemplory or punitive damages may be collected unless there has been some actual damages. In this case, it is the Federal Government, in violation of the constitu-

tional civil guarantee, brings an action for damages, exemplory or punitive and collected them when there has been no actual damages.

We, therefore, submit that the judgment of the Circuit Court of Appeals is erroneous and should be reversed and that the importance of the questions involved, which are so great and the effect so wide spread to be a national act, that those questions should be determined by the highest court in the land to the end that we may all know just what our rights and privileges and immunities may be.

We, therefore, earnestly urge that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

H. H. SPETEN,

By his Attorney,
F. E. McCURDY,
Bismarck, North Dakota.

Rev. F. Shafer, his attorney
Bismarck, N. Dak

No. [illegible]

In the Supreme Court of the United States

October Term, 1954

[illegible]

v.

[illegible]

On [illegible]

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 999

H. H. SPETEN, PETITIONER

v.

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION

ON PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

No opinion was rendered by the District Court. Its findings of fact and conclusions of law appear in the Record (R. 15–18). The opinion of the Circuit Court of Appeals for the Eighth Circuit (R. 31–35) is reported in 146 F. 2d 602.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Eighth Circuit was entered on January 17, 1945. The petition for a writ of certiorari was filed in this Court on February 28, 1945. Juris-

diction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the statutory right of action for damages for a price overcharge which Section 205 (e) of the Emergency Price Control Act as amended vests respectively (1) "in the person who buys * * * for use or consumption other than in the course of trade or business", and, (2) in the Price Administrator when "the buyer * * * is not entitled for any reason to bring the action", belongs to the Administrator in the case of an over-ceiling sale to a farmer of a combine for use in harvesting his grain and for general farming use.

2. Whether the provision authorizing the Administrator to recover damages constitutes a taking of property without just compensation prohibited by the Fifth Amendment.

STATUTE AND REGULATION INVOLVED

The case involves the Emergency Price Control Act of 1942 (Act of January 30, 1942, 56 Stat. 23, 50 U. S. C. App., Supp. III, Sec. 901), as amended by the Stabilization Extension Act of 1944 (Act of June 30, 1944, 58 Stat. 640, 50 U. S. C. A. App. Sec. 925), and Maximum Price Regulation No. 133, as amended, 7 F. R. 3185 and 8 F. R. 234, 2286. The pertinent provisions of the Act and

the Regulation are set forth in the Appendix, *infra*.

STATEMENT

The Administrator instituted this action in the District Court for the District of North Dakota pursuant to Section 205 (e) of the Act to recover statutory damages from the petitioner for selling two combines to farmers on July 27, 1943, at prices over the ceiling.[1] The facts were stipulated (R. 10–14), and the findings of fact (R. 16–17) are unchallenged.

The facts, in so far as they are pertinent to the issues now raised, are merely that the petitioner sold the combines at prices higher than those permitted under the regulations, and that the purchasers were farmers who obtained the combines in order to use them in the course of their farming operations.

Petitioner's defenses were (1) that under Section 205 (e) of the Emergency Price Control Act the right of action for damages was vested in the farmer-purchasers and not in the Administrator, on the ground that the purchases by the farmers were "for use and consumption other than in the course of trade or business"; and (2) that the vesting of the right of action for damages in the Administrator and not "for the benefit of the

[1] The Administrator also sought and obtained an injunction pursuant to Section 205 (a) of the Act (R. 4, 7, 18, 33–34). Petitioner raises no question here which relates to the propriety of the injunction.

'injured parties'" was unconstitutional (R. 9–10).

The district court, overruling these contentions, granted the Government's motion for summary judgment, and awarded the Administrator damages totalling three times the aggregate of the overcharges (R. 18–19). The conclusions of the district court were approved by the circuit court of appeals (R. 31–33), but the case was remanded in order to permit the petitioner to take advantage of an intervening amendment to the Act,[2] which provided that if the defendant proved that a violation was not wilful nor the result of failure to take practicable precautions, the recovery should be in the amount of the overcharges or $25, whichever was the greater, instead of treble damages (R. 34–35).

ARGUMENT

1. The rulings below that the statute gives the right of action to the Administrator and not to the farmer purchasers are plainly correct.

It is contended that the term "use or consumption other than in the course of trade or business" (Section 205 (e)) means use or consumption by an ultimate user or consumer even though in the course of trade or business, so long as there is no resale; and, accordingly, that the Administrator

[2] Added by Section 108 (b) of the Stabilization Extension Act of 1944 (Act of June 30, 1944, 50 U. S. C. A. App. Sec. 925), *infra*, p. 11.

has the right of action only when the purchase is for resale. But obviously "in the course of trade or business" has a much broader meaning than "for resale", and the court below, together with the other appellate courts to which the issue has been presented, rightly so held. See *Bowles* v. *Seminole Rock and Sand Co.*, 145 F. 2d 482 (C. C. A. 5), certiorari granted on another issue, March 12, 1945, No. 914, this Term; *Lightbody* v. *Russell*, 293 N. Y. 492, 58 N. E. 2d 508. Cf. *Bowles* v. *Glick Brothers Lumber Co.*, 146 F. 2d 566 (C. C. A 9).[3]

Section 205 (e) looks to two broad classes of purchasers: (1) those who buy for *personal* consumption other than in the course of trade or business, e. g., the housewife buying at the local store; and (2) those who buy for use or consumption in the course of their trade or business. The first class is given a right of action for overcharges. But those in the second class may be able to include the amount they are overcharged in the price of their own product, so that they might receive a windfall if permitted also to recover damages from the seller. In order that those who sell to such purchasers should not escape civil liability, the statute granted the *Administrator* the civil right of action against them.

[3] A decision to the contrary in *Bowles* v. *Rogers*, 57 F. Supp. 987 (N. D. Ind. 1944) is pending on appeal to the Circuit Court of Appeals for the Seventh Circuit.

In addition, Section 205 (e) carries forward the parallel distinction contained in Section 4 of the Act, which in establishing the statutory prohibitions does not reach the non-commercial buyer, but which makes the buyer in the course of trade or business subject to the statutory prohibitions to the same extent as the seller (Appendix, *infra*, p. 10). Congress had been advised that (Hearings before the Senate Banking Committee on the Price Control Bill, H. R. 5990, 77th Cong., 1st sess. (1941), p. 141 (testimony of David Ginsburg, General Counsel of OPACS and OPA)):

> * * * a lot of pressure on sellers comes from the buyers themselves. This does not apply to the ordinary purchaser of household goods for immediate consumption; it only applies to persons who buy in the course of trade or business, so that the price regulation is made applicable both to the seller and to the buyer, and only to those buyers who buy for business purposes in business transactions.

It would not have been feasible to grant the civil remedy to a class of buyers who might themselves be chargeable with violating the statute with respect to the same transaction. Accordingly the Price Administrator was given the right to institute suit for statutory damages in all cases of "industrial buyers" (*id.*, at p. 216),[4] and the only purchasers who were empowered to sue in their own right for overcharges were "non-

[4] Cf. *Bowles* v. *Glick Brothers Lumber Co.*, *supra*.

commercial consumers" (Conference Report on the Price Control Bill, H. Rep. No. 1658, 77th Cong., 2d sess. (1942), p. 26), "the housewife, in effect" (Senate Hearings, *op. cit.*, at p. 141). The contention that Section 205 (e) draws a distinction between persons in "trade or business" who purchase for resale, and those who are "ultimate consumers" is thus without foundation in the language of the Act, or the legislative history.

Petitioner's attempted reading of the statute would subvert its policy. Those who consume in the course of trade or business include some of the largest and most influential purchasers. Common examples are the steel mill buying coal for consumption in its blast furnaces, the department store buying delivery trucks, or the railroad buying ballast for its right of way. (*Bowles* v. *Seminole Rock and Sand Co., supra*). Cf. also *Bowles* v. *Rock*, 55 F. Supp. 865 (D. Neb. 1944); *Bowles* v. *Silverman*, 57 F. Supp. 990 (D. S. Dak. 1944).

Petitioner makes no contention, other than the point just considered—which relates to all producers who use a purchased product in the course of business but do not resell it—that farming is not a "trade or business", and that a purchase of harvesting and threshing machinery for carrying on general farming operations is not for use "in the course of trade or business" within the meaning of Section 205 (e). Petitioner did present such an argument to the Circuit Court of Appeals, and the opinion below collects

the authorities which demonstrate that farming is properly to be regarded as a trade or business within the meaning of the Act (R. 32, n. 5).

2. Petitioner contends that because the Administrator is not suing for actual damages which he or the Government has suffered, the proceeding violates the provision of the Fifth Amendment that private property shall not be "taken for public use without just compensation".[5] The thought apparently is that the Constitution prohibits the Federal Government from imposing civil penalties payable to it in the absence of pecuniary injury to it.

But Congress has frequently availed itself of the civil penalty as a method of law enforcement, and this Court has held that there was no constitutional objection to its doing so. *Hepner* v. *United States*, 213 U. S. 103 (transporting an alien into the country unlawfully); *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U. S. 320 (same); *Chicago B. & Q. Ry. Co.* v. *United States*, 220 U. S. 559, 578 (Safety Appliance Act); *Baltimore & Ohio Southwestern R. R.* v. *United States*, 220 U. S. 94 (Care of Animals in Transit Act); *Helvering* v. *Mitchell*, 303 U. S. 391, 399–404, and cases cited therein.

[5] Petitioner's answer did not advert to the Fifth Amendment but to Article III, Section 2 and the Sixth Amendment as support for the constitutional contention (R. 10).

Thus the Administrator's right of recovery is entirely constitutional even if regarded as penal. *A fortiori*, there can be no constitutional objection to giving the Government a right of recovery for overcharges in lieu of those purchasers as to whom the granting of such a remedy was not deemed desirable.[6]

CONCLUSION

The decision of the court below is correct and is supported by the decision of the other appellate courts. Accordingly we respectfully submit that certiorari should be denied.

CHARLES FAHY,
Solicitor General.

ROBERT L. STERN,
Special Assistant to the Attorney General.

THOMAS I. EMERSON,
Deputy Administrator for Enforcement,

FLEMING JAMES, JR.,

ABRAHAM GLASSER,

NATHAN SIEGEL,
Office of Price Administration.

APRIL, 1945.

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[6] In so far as petitioner is complaining of the liquidated damages in the amount of twice the overcharge, as distinct from the overcharge itself, the case is premature, inasmuch as the remand requires the district court to determine, under the test prescribed in the 1944 amendment to the Act (*supra*, p. 4), whether petitioner is liable for more than the amount of the overcharge.

APPENDIX

1. *Emergency Price Control Act of 1942* (Act of January 30, 1942, 56 Stat. 23, 50 U. S. C. App., Supp. III, Sec. 901 et seq.).

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

SEC. 205 (e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be. If any person selling

a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. The provisions of this subsection shall not take effect until after the expiration of six months from the date of enactment of this Act.

2. *Stabilization Extension Act of 1944* (Act of June 30, 1944, 58 Stat. 640, 50 U. S. C. A. App. sec. 925).

SEC. 108 (b) Subsection (e) of section 205 of the Emergency Price Control Act of 1942, as amended, is amended to read as follows:

"(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not

less than $25 nor more than $50, as the court in its discretion may determine: *Provided, however,* That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word 'overcharge' shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same pur-

chaser prior to the institution of the action in which such judgment was rendered."

SEC. 108 (c) The amendment made by subsection (b), insofar as it relates to actions by buyers or actions which may be brought by the Administrator only after the buyer has failed to institute an action within thirty days from the occurrence of the violation, shall be applicable only with respect to violations occurring after the date of enactment of this Act. In other cases, such amendment shall be applicable with respect to proceedings pending on the date of enactment of this Act and with respect to proceedings instituted thereafter.

3. *Maximum Price Regulation No. 133*, 7 F. R. 3185, issued April 28, 1942, effective May 11, 1942, as amended January 4, 1943, 8 F. R. 234, and February 20, 1943, 8 F. R. 2286.

§ 1361.3a *Maximum prices—used equipment*—(a) *Base price.* (1) In determining the maximum price for any of the following items of used farm equipment, a "base price" must first be calculated:

Farm tractors (except crawler tractors)
Combines
Corn pickers
Corn binders
Hay balers (motor or tractor operated)

A combination of any of the above listed items with other items of farm equipment specifically designed for mounting thereon, provided the combination is sold as a unit.

(2) The "base price" is the first of the following which is available:

(i) The manufacturer's suggested retail price for the same item of equipment f. o. b. factory which is currently in effect or if there is no such price currently in effect, the manufacturer's suggested retail price last issued; or

(ii) If the item of equipment has no manufacturer's current suggested retail price and never had any, the maximum price for which the same or nearest equivalent item might be sold new by any dealer in the locality, minus carload freight from the plant of the manufacturer thereof.

(3) In the case of a combination sale referred to in subparagraph (1), the maximum price for the unit shall be equal to the sum of the maximum prices of each of the items of farm equipment sold as part of the unit.

(b) *Maximum prices—sales by farmers, auctioneers, etc.* The maximum price applicable to the sale by any person other than a retail dealer of any item of used farm equipment listed in paragraph (a) of this section shall be 85% of the "base price" if the item is sold within one year after sale new, and in any other case shall be 70% of the "base price." This paragraph does not apply to items of used farm equipment not listed in paragraph (a) of this section.

(c) *Maximum prices—sales by dealers—in general.*—(1) In general, the maximum price applicable to the sale by any retail dealer of any item of used farm equipment including items listed in paragraph (a) of this section shall be the sum of—

(i) The trade-in allowance granted or purchase price paid by the dealer, or, in the case of a

repossessed item, the balance due to the dealer, distributor, manufacturer, or finance company;

(ii) $15 or 5% of (i), whichever is the greater;

(iii) The maximum prices herein specified for such parts as are needed and used in repairing the equipment;

(iv) A charge for other materials and for labor needed and used in repairing the equipment, not to exceed maximum prices determined in accordance with the applicable maximum price regulations issued by the Office of Price Administration.

In no event, however, shall the price so calculated for any item of used farm equipment listed in paragraph (a) of this section exceed 85% of the "base price" if the item is sold within one year of its sale new, or 70% of the "base price" in any other case.

(2) In the case of a sale by a dealer of any item which has been transported more than 100 miles from the place of its purchase, there may be added to the price as calculated in subparagraph (1) above, the actual cost of transportation from the place of purchase to the dealer's place of business.

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